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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 GREGORY S. ROBINSON,

8 Petitioner,

9 v.

10 SCOTT FRAKES,

11 Respondent.

No. C11-5302 RJB/KLS

ORDER DENYING SECOND MOTION
FOR THE APPOINTMENT OF COUNSEL

12 Before the Court is Petitioner's second motion for the appointment of counsel in this
13 habeas case. ECF No. 25. Petitioner bases this second motion on his claim that the issues he
14 raises are of constitutional magnitude and because portions of his claim have been re-referred to
15 this Court for consideration on the merits. He appears to equate the re-referral with a likelihood
16 of success on the merits and states that he has made a prima facie showing that he was denied
17 effective assistance of counsel. ECF No. 27.

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19 This Court recommended the dismissal of Claim Seven (denial of trial transcripts and
20 court records) and Claim Eight (ineffective assistance of appellate counsel) on the merits. It also
21 recommended the dismissal of the remainder of Petitioner's claims, except for a portion of claim
22 five, as unexhausted and procedurally barred. ECF No. 22. The District Court adopted the
23 Report and Recommendation in part, re-referring the matter to the undersigned for consideration
24 of claim three and a portion of claim five on the merits and for a recommendation on the
25 issuance of a certificate of appealability. ECF No. 25. The District Court further found that
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ORDER DENYING MOTION FOR COUNSEL - 1

1 Petitioner had provided no reasonable argument in support of holding an evidentiary hearing. *Id.*
2 at 5.

3 There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254
4 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See
5 *Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164,
6 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United
7 States District Courts. An evidentiary hearing has not been granted in this case and the claims in
8 the petition are adequately set forth and articulated. Petitioner has not yet demonstrated that an
9 evidentiary hearing is necessary or that he is entitled to one.
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11 Accordingly, it is **ORDERED**:

12 (1) Petitioner's second motion for counsel (ECF No. 27) is **DENIED**.

13 (2) The Clerk is directed to send copies of this Order to Petitioner.
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15 DATED this 6th day of December, 2011.

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18 Karen L. Strombom
19 United States Magistrate Judge
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